

any other allegations that are inconsistent with the foregoing response and with Plaintiff's allegations contained in the Complaint, they are denied.

4. Plaintiff denies the allegations in paragraph 4.

5. Plaintiff denies the allegations contained in the first sentence of paragraph 5. The allegations contained in the second sentence of paragraph 5 are unclear and therefore Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of same, and accordingly they are denied.

6. Plaintiff denies the allegations in paragraph 6. In addition, Defendants' allegation that 17 U.S.C. §§ 304(c) and 203(a) entitle Defendants to one-half of the income earned from the exploitation of the Composition is an incorrect legal conclusion since (a) 17 U.S.C. §§ 304(c) and 203(a) relate solely to income earned in the United States; (b) Sony/ATV at all times retains not only foreign income but United States income earned from the exploitation of the Composition under the derivative works exception; and (c) the 2016 Phil Everly/Don Everly Notice, if deemed effective, which Plaintiff denies, would not provide Defendants with any rights to income earned from the exploitation of the Composition except with respect to United States income earned from and after August 15, 2018.

7. Any and all allegations contained in the Counterclaim that have not been admitted or denied, are hereby expressly denied. Plaintiff denies Defendants are entitled to any of the relief requested in the Prayer for Relief, and further aver that Plaintiff is entitled to the relief requested in the original Complaint.

AFFIRMATIVE DEFENSES

Having answered Defendants' Counterclaim, Plaintiff pleads the following Affirmative Defenses to the Counterclaim. Plaintiff reserves the right to add Affirmative Defenses as may be learned in the course of discovery proceedings or otherwise.

First Affirmative Defense **(Unclean Hands)**

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that Defendants are barred under the doctrine of unclean hands.

Second Affirmative Defense **(Failure to State a Claim)**

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that the Counterclaim fails to state a claim upon which relief can be granted, and therefore, should be dismissed.

Third Affirmative Defense **(Lack of Standing)**

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that Defendants are barred from asserting the Counterclaim because they lack standing as having any rights as statutory successors to an "author" of the Composition and the others under the United States Copyright Act.

Fourth Affirmative Defense **(Statute of Limitations – Adjudication of Co-Authorship and Joint Works)**

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that Defendants are barred by the statute of limitations from

making any claim to co-authorship of the Composition and the others and that the Composition and the others are thereby joint works.

Fifth Affirmative Defense
(Laches – Adjudication of Co-Authorship and Joint Works)

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that Defendants are barred under the doctrine of laches from making any claim to co-authorship of the Composition and the others and that the Composition and the others are joint works.

Sixth Affirmative Defense
(Statute of Limitations – Asserting the Unenforceability of the 1980 Release)

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that Defendants are barred by the statute of limitations from asserting the 1980 Release is unenforceable.

Seventh Affirmative Defense
(Laches – Asserting the Unenforceability of the 1980 Release)

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that Defendants are barred under the doctrine of laches from asserting the 1980 Release is unenforceable.

Eighth Affirmative Defense
(Equitable Estoppel – Nullification of Authorship)

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that Defendants are barred under the doctrine of equitable estoppel because Phil Everly annulled and nullified any purported status he was previously credited with as an author of the Composition and the others, exercised no rights or control over

the Composition and the others, and took no action as an author of the Composition and the others since 1980.

Ninth Affirmative Defense
(Equitable Estoppel – Challenging the 1980 Release)

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that Defendants are barred under the doctrine of equitable estoppel from challenging the 1980 Release.

Tenth Affirmative Defense
(Waiver, Ratification, Acquiescence)

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that Defendants are barred under the doctrines of waiver, ratification and acquiescence.

Eleventh Affirmative Defense
(Premature and Speculative – 2016 Phil Everly/Don Everly Notice)

As a separate and distinct affirmative defense, Plaintiff asserts, with respect to the subject matter alleged in the Counterclaim, that Defendants have not suffered any harm or damage from the matters related to the 2016 Phil Everly/Don Everly Notice as alleged in the Counterclaim because even if the 1980 Release is a grant subject to termination under 17 U.S.C. §203(a), which Plaintiff denies, the Effective Date of Termination would be August 15, 2018, and therefore, the claims asserted and relief sought are premature, speculative and not ripe for adjudication.

Twelfth Affirmative Defense
(Reservation of Additional Defenses)

As a separate and distinct affirmative defense, Plaintiff asserts he may have additional defenses currently unknown to him, which may be ascertained during the course of this

proceeding. Plaintiff, therefore, reserves the right to assert additional affirmative defenses as they become desirable or necessary to do so to conform to the proof.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served via the Court's ECF system this 18th day of December, 2017, upon the following:

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